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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

TRAN, KHOA H

ART UNIT	PAPER NUMBER
3634	

DATE MAILED: 10/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/015,436

Applicant(s)

HLAVACH ET AL.

Examiner

Khoa Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) 16-18, 20 and 22-28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15, 19 and 21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2 and 3.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Election/Restrictions

Applicants' election of Group I, Species I: Figures 1-7 and 10 with traverse in Paper No. 6 is acknowledged. The traversal is on the grounds that the four species are sufficiently related that a thorough search for one species would encompass a search for the subject matter of the other species and the searches and examination of an entire application can be made without serious burden. This self-serving statement fails to show why the various species are not patentably distinct from one another and the applicants fail to show that a coextensive search is a reason for not requiring a restriction requirement. Furthermore, the allegation that various species are sufficiently related fails to point out how various species are not patentably distinct from one another. The mere presence of generic claims is not a reason to prevent an election requirement nor does it necessitate search and consideration of any and all features of each of the non-elected species. For example, why is it believed necessary for the examiner to search for and consider a panel with a window when neither claims 1 nor 21 require such and the elected embodiment does not have such?

With respect to applicants' allegation that there is no burden on the examiner to search and examine the entire application, it is noted that applicants fail to provide any reason or rationale as to why there is no burden on the examiner have to search and consider multiple patentably distinct embodiments in the same application. Is it applicant's position that there is no serious burden because the species are not patentably distinct? Applicants should note that a "serious burden" takes into account more than merely the search for prior art references and a serious burden is clearly

present in having to consider and evaluate of references with respect to potential art rejections and evaluation of the issues that arise from the resultant rejections, including consideration of applicants' arguments. Accordingly, the election requirement is deemed to be proper and is therefore made FINAL.

Claims 16-18, 20, and 22-28 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected Group and Species. Claims 16-18, 20, and 22-28 are considered as non-elected species because of the following reasons:

Claims 16 and 17 read on Figure 8 because the recitation of the top portion of one panel covers the top portion of the other panel.

Claim 18 reads on Figure 9 because the recitation of "the inner panel and the outer panel are hinged"

Claim 20 reads on Figure 11 because the recitation of "outer panel includes at least one window".

Claims 22-28 are directed to a non-elected group of method claims.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2, 7, 8, 9, and 10-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. With respect to claims 2, 7, 8, 9, 10, 12-14, the recitation of "or" renders the claims indefinite because it is unclear

which one to the two nonequivalent alternatives the applicants are positively set forth.

With respect to claim 11, it is unclear what constitutes "hardware".

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-15, 19 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hellenkamp et al. in view of Presto. Hellenkamp et al. disclose a vehicle double-walled panel comprising an outer panel (28), an inner panel (26), a plurality of support structures (36, 58) position between the outer and inner panels and a plurality of bolts (60, 68, 130) for connecting with attachment points. The inner panel (26) having a top portion, a bottom portion, a first longitudinal end, a second longitudinal end, an outer appearance surface (27), an inner appearance surface (29), one or more attachment points (62) and a plurality of inner support structures (36) extending between the longitudinal ends and integrally formed with the inner panel that define a plurality of compartments (39). The outer panel (28) having a top portion, a bottom portion, a first longitudinal end, a second longitudinal ends, an outer appearance surface, an inner appearance surface that facing the inner panel, and one or more attachment points (128), see Figures 15-18 and 20. Presto teaches a plastic door having an outer plastic panel, an inner plastic panel and hardware such as L-shaped

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bracket (54), hinges (64, 66), latches (71) and lock connected to the inner panel, see Figures 1 and 2. It would have been obvious to one of ordinary skill in the art at the time of the invention to make the outer panel and the inner panel of Hallenkamp et al. to be plastic and to provide the door with hardware as taught by Presto in order to have an operational door that is lightweight because it is well-within the level of skill in the art to utilize the known materials of plastic per se to produce the door panel therefrom accordingly to its suitability of intended use without structurally alter the door function thus it does not produce any new matter or unexpected results.

Claim 1, 6-15, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meinke in view of Seksaria et al. Meinke discloses a tailgate door for a pickup truck comprising an inner panel (26), an outer panel (24), each panel having pluralities of attachment points (30L, 30h) to receive fasteners for attachment the outer panel with the inner panel such that a compartment is defined between the panels to retain hardware therein such as a latch (32, 34) and K-shaped bracket (42). See Figures 4, 5, and 10-12. Meinke does not teach the inner support structures positioned between the inner and outer panels. However, Seksaria et al. teach a plurality of inner support structures (35) position between the inner and outer panels. See Figures 2 and 4. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to provide the tailgate door of Meinke with the provision of inner support structures as taught by Seksaria et al. in order to add stiffness and strength to the tailgate to resist dent when the tailgate might be accidentally bumped into. With respect to the door outer and inner panels are made of plastic, the examiner takes Official

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Notice that the door panel including an outer panel and an inner panel made of plastic is notoriously old and well-known features of the art per se and it would have been obvious to one of ordinary skill in the art to make the outer and inner panels to be plastic for a desire to have a door that is lightweight. With respect to the panel being formed by inject molding, compression molding, blow molding, extrusion molding or thermoformed, it should be noted that the method step of the panel being formed is irrelevant to patentability of the product. Further, ^{it is} the patentability of the product, itself, that is to be determined and not the recited process steps that is to be determined.

Claims 2-5, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meinke in view of Seksaria et al. as applied to claims 1, 6-15, and 19 above, and further in view of Fedrigo ('058). Fedrigo ('058) teaches a tailgate door panel (6) having integrally formed inner support structures (8). See Figures 2 and 3. It would have been obvious to one of ordinary skill in the art at the time of the invention to make the inner support structures of Meinke in view of Seksaria et al. to be integrally formed as taught by Fedrigo ('058) in order not to have to assemble the inner support structures with the panel.

The prior art made of record and not relied upon is considered pertinent to applicants' disclosure. Wold, Schlachter, Fedrigo, Ramos, Habdas, Carnes, Pugh, Kalis, Jr., Matlack, Schreiner, Whitehead et al., Altman et al., Walz et al., DeRees et al., McLaren et al. ('062) and ('636), Grier et al., Zaydel, Kowall et al., Gulisano, Nishikawa et al., Clare et al. ('598), ('549), and (018), Clark et al., M. Watter, Freeman, and Kelman are cited to show devices having similar configurations of design.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoa Tran whose telephone number is (703) 306-3437. The examiner can normally be reached on Monday through Thursday from 9:30 A.M. to 7:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola, can be reached on (703) 308-2686. The fax phone number for this Group before a final Office action is (703) 872-9326 and after a final Office action is (703) 872-9327.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-2168.

Khoa Tran

September 10, 2003



DANIEL P. STODOLA
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